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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/518,393	12/17/2004	Junko Deguchi	10992.0930	8217		
22852	7590	07/09/2009	EXAMINER			
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				WATKINS III, WILLIAM P		
ART UNIT		PAPER NUMBER				
1794						
MAIL DATE		DELIVERY MODE				
07/09/2009		PAPER				

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/518,393	DEGUCHI, JUNKO	
	<b>Examiner</b>	<b>Art Unit</b>	
	William P. Watkins III	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 19 March 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,4-9 and 11-17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 4 is/are allowed.

6) Claim(s) \_\_\_\_\_ is/are rejected.

7) Claim(s) 1,5-9 and 11-17 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. Claim 4 is allowed. There is no suggestion in the art rejection given below of a waviness with the claimed cycle of 2,000 to 20,000 micrometers and claimed cycle width.

2. The rejection in section 5 of the detailed portion of the office action mailed 9/19/2008 is withdrawn in view of the cancellation of claim 3

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 5-9 and 11-17 are rejected under 35 U.S.C. 103(a) as obvious over Matsuzaki et al. (U.S. 6,647,550 B1).

Matsuzaki et al. teaches grooves in the outer surface of a swim suit fabric with a depth of 20 to 500 micrometers, a width of 200 to 1500 micrometers and a pitch of 300 to 3000 micrometers (col. 7, lines 35-40, Figure 3). The embossed fabric maybe made of elastic threads and maybe a two way tricot fabric (col. 4, lines 1-10, col. 7, lines 25-35). The instant invention claims streaky protruded portions with a width of 100 to 2500

micrometers, a height of 30 to 300% of the width and a compression ratio of 8 to 90%.

It would have been obvious to one of ordinary skill in the art that the grooves of Matsuzaki et al. are defined by protruded portions that overlap in width and height the instant claimed height and width limitations. The compression ratio is taken as also being met by the reference as an elastic two way tricot is taught as a fabric with the compression ratio of the instant claims in Example 6 of the instant specification. The examiner takes a streaky protruding portion as being one which extends in the longitudinal direction.

5. Applicant's arguments filed 19 March 2009 have been fully considered but they are not persuasive.

Applicant argues that grooves and projection of the fabric of Matsuzaki et al. are made by embossing, which is not the most preferred method in the instant specification for making the instant invention and therefore Matsuzaki et al. cannot have the instant claimed groove structure. As the instant specification teaches embossing as a method to make the instant claimed invention at page 12 lines 25-35, the examiner fails to understand this argument. Applicant also argues that the preferred range of height to width taught by Matsuzaki et al. differs from that in some of the instant dependent claims. The teachings of Matsuzaki et al. are not limited to a preferred range. It would have been obvious to one of ordinary skill in the art to have used any taught range in the reference absent unexpected results. No particular weight is given to the method of

forming the grooves in the instant article claims unless a different final product structure can be shown between those of the instant claims and the applied references.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WW/ww  
July 9, 2009

/William P. Watkins III/  
Primary Examiner, Art Unit 1794